

**REPORT OF THE JOINT PROMOTION MISSION
TO
THE KINGDOM OF SWAZILAND**

BY

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&
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07 to 11 March 2016

**Adopted during the 60th Ordinary Session
of the African Commission on Human and Peoples' Rights,
held from 08 to 22 May 2017
in Niamey, Republic of Niger**



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ACKNOWLEDGEMENTS

The African Commission on Human and Peoples' Rights (the Commission) would like to express its gratitude to the Government of the Kingdom of Swaziland (Swaziland) for authorizing this Promotion Mission, and for putting at the disposal of its delegation all the necessary facilities and personnel to ensure the success of the Mission. In particular, the Commission singles out for special gratitude, the Minister and staff of the Ministry of Justice and Constitutional Affairs, in addition to the Executive Secretary of the Commission on Human Rights and Public Administration/Integrity, for the excellent arrangements put in place which enabled the delegation to meet a cross-section of the Swazi society, in order to have a fairly representative view of the human rights situation in the country.

The Commission also wishes to thank all the representatives from various Government ministries, independent statutory institutions, non-governmental organizations (NGOs) and other individuals that found time to meeting with its delegation.

I. INTRODUCTION

1. The African Charter on Human and Peoples' Rights (the African Charter) mandates the Commission to promote the observance of the rights guaranteed in the African Charter, to monitor its implementation, to ensure the protection of the rights and freedoms set out in therein, and to interpret and advise on its implementation.
2. The Kingdom of Swaziland (Swaziland) is party to the African Charter, which it ratified on 15 September 1995.
3. The Commission undertook its first promotion mission to the Kingdom of Swaziland through Commissioner Pansy Tlakula from **21 to 25 August 2006**, and undertook the second promotion mission from **07 to 11 March 2016**.
4. The delegation from the Commission was comprised of the following:
 - i. **Honourable Commissioner Pansy Tlakula**, the Chairperson of the Commission, Commissioner Rapporteur for the Human Rights Situation in the Kingdom of Swaziland and the Special Rapporteur on Freedom of Expression and Access to Information in Africa (the Chairperson);
 - ii. **Honourable Commissioner Solomon Dersso**, the Chairperson of the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (Commissioner Dersso); and
 - iii. Legal Officers from the Secretariat of the Commission, including Mrs. Abiola Idowu-Ojo and Ms. Eva Shemmayah Heza.

II. TERMS OF REFERENCE OF THE MISSION

5. The Terms of Reference of the Mission were as follows:
 - i. To promote the African Charter, and other regional human rights instruments, through the exchange of views and sharing of experiences with the Government of Swaziland and the main stakeholders working in the field of human rights, on strategies to improve the enjoyment of human rights in the country;
 - ii. To advocate for the ratification of regional and international human rights instruments that have not been ratified by Swaziland;
 - iii. To raise awareness on the activities of the Commission in Swaziland, especially among the relevant Government departments and civil society organizations (CSOs);
 - iv. To seek information on human rights issues of particular concern to the Commission including: abolition of the death penalty in law; prevention of torture; the human rights situation of women and children; freedom of association and assembly; independence of the judiciary; extractive industries; older persons; persons with disabilities; and persons living with HIV/AIDS;
 - v. To visit prisons in Swaziland in order to assess the extent to which conditions of detention comply with regional and international standards, and to hold discussions with prison administrative officials and other stakeholders on all

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issues relating to detention and prisons, and on the work of the Commission on this theme;

- vi. To initiate constructive dialogue with the Government about the importance of the right to freedom of expression and access to information generally, as well as before and after elections;
- vii. To hold discussions on the national media legislation, policies and practice in Swaziland, with regards to freedom of expression and access to information standards in general, and the Declaration of Principles on Freedom of Expression in Africa in particular;
- viii. To follow up on recommendations given in the Promotion Mission to the Kingdom of Swaziland which was conducted by the Commission in 2006;
- ix. To follow up on implementation of the Commission's recommendations in *Communication 251/02: Lawyers of Human Rights v. Swaziland*, decided during the 37th Ordinary Session in 2005;
- x. To follow up on implementation of Resolutions and Press Releases which have been issued by the Commission with regards to the Kingdom of Swaziland; and
- xi. To encourage the Government of the Kingdom of Swaziland to submit outstanding Periodic Reports and to participate regularly in the activities of the Commission including attending sessions of the Commission.

III. METHODOLOGY

6. During the Mission, the delegation met with the country's highest authorities, including: the Prime Minister; the Deputy Prime Minister; the Minister of Foreign Affairs & International Cooperation; the Minister of Justice; the Minister of Information, Communications and Technology; the Minister of Natural Resources and Energy; the Speaker of the House of Assembly; the Chief Justice; the Under Secretary in the Ministry of Labour; and the Director of Management Services in the Ministry of Public Service.
7. The delegation also held meetings with the various institutions: including the Royal Swaziland Police Service; the Head of His Majesty's Correctional Services; the Election and Boundaries Commission; the Swaziland Commission on Human Rights and Public Administration/Integrity; and the National Emergency Response Council on HIV/AIDS.
8. Additionally, the delegation met with representatives from the European Union Delegation to the Kingdom of Swaziland, the United Nations Development Program, the University of Swaziland, the Law Society of Swaziland, as well as representatives from various CSOs working in Swaziland.
9. The delegation visited the **Matsapha Correctional Centre**, the **Mawelawela Women's Correctional Centre** where it met with personnel involved in the prison's administration, in addition to the **Vulamasango School** where juveniles in conflict with the law attend school.
10. The Mission concluded with a joint press conference held with the Prime Minister of Swaziland, and this was followed by a general press conference.

IV. GENERAL INFORMATION¹**Brief historical and political background**

11. Swaziland, sometimes called *kangwane* or *Eswatini*, is a sovereign state in Southern Africa. The people who inhabited Swaziland were clans of Bantu origin who migrated to the region and settled in Swaziland during the 18th Century. Following an appeal from the ruler, **Mswazi**, for support against Zulus, the British and the Transvaal governments granted the independence of Swaziland in 1881. South Africa held Swaziland as a protectorate from 1894 to 1899, but after the Boer War, in 1902, Swaziland was transferred to British administration. After the territory was constituted a protectorate in 1963, it became the independent nation of Swaziland in 1968.
12. On 12 April 1973, **King Sobhuza II** issued the King's Proclamation No. 12 of 1973, whereby he declared that he had assumed supreme power in Swaziland and that all legislative, executive and judicial power vested in him. This also entailed the suspension of the Constitution and the banning of competitive political activities including political parties. Swaziland then designed a political system called the **Tinkhundla**,² with the King as an absolute monarch.
13. **King Sobhuza II**, who ruled the country by decree following suspension of the Constitution, passed away in 1982 after ruling Swaziland for 61 years. A "Regency" was established followed his death with **Queen Regent Dzeliwe Shongwe** as the Head of State until 1984 when she was removed by **Liqoqo**³ and replaced by **Queen Mother Ntfombi Tfwala**. **King Mswati III**, the son of **Queen Ntfombi**, was crowned King in 1986.

The land and people⁴

14. Swaziland is a landlocked country in Southern Africa, lying between Mozambique and South Africa. The major regions of the country are Lowveld, Midveld and Highveld. The capital city of Swaziland is Mbabane. As of 01 January 2016, the population of Swaziland was estimated to be 1,291,298 people.⁵
15. The majority of Swaziland's population is ethnic Swazi, mixed with a small number of Zulus and white Africans, predominantly of British and Afrikaner origin. Traditionally, Swazis have been subsistence farmers and herders; however most now work in the growing urban formal economy and in government. Swaziland is a

¹ Sources of information: <http://www.infoplease.com/country/swaziland.html>; <https://en.wikipedia.org/wiki/Swaziland>; <http://www.bbc.com/news/world-africa-14095711>; Report of the Promotion Mission to the Kingdom of Swaziland (2006) <http://www.achpr.org/states/swaziland/missions/promo-2006/>;

² According to section 79 of the Constitution of Swaziland, the system of Government is democratic and participatory based on the *Tinkhundla*. The system emphasizes the devolution of state power from central government to *Tinkhundla* while individual merit is a basis for election and appointment into public office.

http://www.gov.sz/index.php?option=com_content&view=article&id=172&Itemid=210

³ The Swazi National Council

⁴ https://en.wikipedia.org/wiki/Geography_of_Swaziland

⁵ <http://worldpopulationreview.com/countries/swaziland-population/>

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largely religious society, with Christianity, and Swazi traditional religion being the most popular religions. 82.70% of the total population adheres to Christianity, making it the most common religion in Swaziland. Most Swazis ascribe a special spiritual role to the Swazi Royal Family.⁶ The official languages are *Siswati*, a language related to Zulu, and English. Government and commercial business is conducted mainly in English.

16. Swaziland possesses the following natural resources: asbestos, coal, clay, cassiterite, hydropower, forests, small gold and diamond deposits, quarry stone, and talc.⁷ The climate of Swaziland varies from tropical to near temperate. Generally speaking, rain falls mostly during the summer months, often in the form of thunderstorms. Winter is the dry season. Annual rainfall is highest on the Highveld in the West, between 1,000 and 2,000 mm (39.4 and 78.7 in) depending on the year. The further East, the less rain, with the Lowveld recording 500 to 900 mm (19.7 to 35.4 in) per annum. Variations in temperature are also related to the altitude of the different regions.⁸

Current political situation

17. A new constitution was enacted in 2005, following which the country and became a constitutional monarchy. The last elections were held on 20 September 2013. The balloting is done on a non-party basis in all categories, and during which the Elections and Boundaries Commission oversaw all election procedures. For local administration Swaziland is divided into four regions namely: *Hhohho, Lubombo, Manzini and Shiselweni*. Parallel to the Government structure is the traditional system, consisting of the King and his advisers, traditional courts, and fifty-five (55) sub-regional districts. Members of parliament were elected from 55 constituencies (also known as *tinkhundla*).⁹
18. The status of political parties in Swaziland is not clearly defined. Political parties were banned in Swaziland in 1973 by **King Sobhuza II**, and this proclamation has to date not been repealed. The 2005 Constitution does not mention political parties, but does guarantee freedom of association, and on this basis, the African United Democratic Party was registered as a legal political party.¹⁰ There is currently no legislation in Swaziland governing registration, regulation, funding and financial control of political parties.

Current Structure of Government

19. The country's current Head of State is His Royal Highness, **King Mswati III**. Executive power lies with the King who exercises it directly or through the Cabinet. The Prime Minister, who is Chairman of Cabinet and leader of Government in Business, is appointed by the King, from the members of the House of Assembly,

⁶ https://en.wikipedia.org/wiki/Demographics_of_Swaziland

⁷ <http://ahistoryofswaziland.blogspot.com>

⁸ https://en.wikipedia.org/wiki/Geography_of_Swaziland

⁹ <https://en.wikipedia.org/wiki/Swaziland>

¹⁰ https://en.wikipedia.org/wiki/Regions_of_Swaziland

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acting on the recommendation of the Advisory Council and may be removed from office by the King for incompetence.

20. The Executive arm consists of the Cabinet and civil servants. The Cabinet is made up of the Prime Minister, the Deputy Prime Minister and eighteen (18) Ministers. They are responsible for policy making, administration and executing the functions of government. The King appoints Ministers, on the recommendation of the Prime Minister, from both Chambers of Parliament. At least half of the Ministers are appointed among the elected members of the House.
21. The Swazi bicameral Parliament, or *Libandla*, consists of the following: the Senate with 30 seats, 10 members appointed by the House of Assembly and 20 appointed by the Monarch to serve five-year terms; and the House of Assembly with 65 seats, 10 members appointed by the Monarch and 55 elected by popular vote to serve five-year terms). The King calls elections every five years after dissolution of Parliament.
22. The country's judiciary comprises of the courts of general jurisdiction: the Supreme Court; High Court and Magistrate Courts; in addition to and other specialized courts such as Swazi or Customary Courts, which deal with minor offenses and violations of traditional Swazi law and custom. Sentences of the traditional courts are subject to appeal and review to the Court of Appeals and High Court.¹¹ In addition there is the Industrial Court and the Industrial Court of Appeal, which are specialist tribunals whose jurisdiction is confined to Labour disputes. The Chief Justice heads the Judiciary.
23. The King, on the advice of the Judicial Service Commission, appoints the Judges of the superior courts. Judges are removable by the King for incompetence or misbehaviour, only on the recommendation of the Judicial Service Commission. The King appoints the officers of the Swazi Courts or Customary Courts independently of the Judicial Service Commission.

Ratification of regional and international human rights instruments

24. Swaziland has ratified, or acceded to, the following regional instruments:
 - The African Charter on the Rights and Welfare of the Child;
 - The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol);
 - The African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa;
 - The OAU Convention Governing the Specific Aspects of Refugee Problems in Africa;
 - The African Youth Charter.
25. Swaziland has ratified, or acceded to, the following international instruments:
 - The International Covenant on Civil and Political Rights;

¹¹ <http://www.nationsencyclopedia.com/Africa/Swaziland-JUDICIAL-SYSTEM.html>

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- The International Covenant on Economic, Social and Cultural Rights;
- The Convention on the Elimination of All Forms of Discrimination against Women;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Rights of the Child;
- The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict;
- The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography;
- The Convention on the Rights of Persons with Disabilities; and
- The Optional Protocol to the Convention on the Rights of Persons with Disabilities.

26. Swaziland has not ratified the following regional instruments:

- The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;
- The African Charter on Democracy, Elections and Governance;
- The African Union Convention on Preventing and Combating Corruption.

27. Swaziland has not ratified the following international instruments:

- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
- The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
- The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The International Convention for the Protection of all Persons from Enforced Disappearance;
- The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

V. CONDUCT OF THE MISSION

28. This section of the Report provides highlights of the series of meetings held with diverse stakeholders who play important roles in the promotion and protection of human and peoples' rights in Swaziland.

29. The mission commenced with a brief courtesy call to the Office of the Minister of Justice and Constitutional Affairs, **H.E. Mr. Edgar Hillary**, who received and welcomed the delegation to the country.

a) GOVERNMENT

1. Meeting with the Prime Minister

30. The delegation met with the Prime Minister of Swaziland, **H.E. Dr. Barnabas Sibusiso Dlamini**, in a meeting which was also attended by the Minister of Justice, and some other Government Officials including the Permanent Secretary in the Office of the Prime Minister, the Permanent Secretary in the Ministry of Justice, and the Press Secretary in the Office of the Prime Minister, amongst others.
31. During the meeting, the delegation was informed on the efforts being undertaken by the Swazi Government in fulfilment of its obligations, including the inclusion of a Bill of Rights in the Swazi Constitution and the establishment of a National Human Rights Institution, namely the Swaziland Commission on Human Rights and Public Administration/Integrity.
32. In response to the questions of the delegation, it was regards to political parties that Swazi citizens have pronounced themselves on the issue, deciding that representation in Parliament should be on a personal basis, and not based on political affiliation. In this regard, it was noted that anyone can contest in elections once they have the support of ten people, thereby giving each person equal chances of contesting for Parliament, as opposed to candidates who might be imposed by the political parties. It was indicated that that this is a 'home grown' democratic political system for the Swazi people, which enjoys the peoples' support and elections are keenly contested, as demonstrated for instance by the turnout in the last elections, which was over 80%. It was noted that notwithstanding this preferred political system, political parties do exist, and persons belonging to political parties participate freely in elections and have been elected to Parliament, although in their personal capacities and not on the platform of political parties.
33. On the issue of the death penalty, it was noted that it is being maintained in the laws of Swaziland only as a deterrent, because in practice, no death sentence has been carried out in Swaziland since 1982. It was also noted that His Majesty the King has pardoned prisoners on death row almost on an annual basis, and that as at that date only one prisoner remained on death row, having been convicted of murdering twenty-three (23) women.
34. On the independence of the Judiciary, it was noted that there were challenges under the leadership of the previous Chief Justice. The Chief Justice later resigned voluntarily, and a new Chief Justice was appointed, with the mandate to ensure that the Judiciary functions efficiently and independently.

2. Meeting with the Deputy Prime Minister

35. The delegation met with the Deputy Prime Minister, **H.E. Senator Paul Dlamini**. At the start of the briefing it was noted that the Gender Coordination Unit is located within the Office of the Deputy Prime Minister.

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36. Regarding issues of gender, it was reported that significant progress has been made; however cultural beliefs and practices continued to pose a number of challenges to the realization of women's rights. It was observed that women generally consider themselves inferior to men, and as a result, they did not freely express themselves in community meetings involving men, and had very low representation in Parliament. It was noted that in the last general election, only one female candidate was elected into Parliament, despite the sensitization campaigns conducted by the Government.
37. Concerning women's right to property inheritance, the conflict between traditional culture and western ideals was noted. It was reported that under the traditional culture, the extended family decided who took control of the deceased man's property and under this system, it was possible for a widow to take charge of her husband's property; however that western ideals have brought about the notion of equal division of property. It was further noted that the issue of inheritance was further exacerbated by the fact that young unmarried women cannot inherit their father's property, and indicated that the Office was working on this issue.
38. On the issue of property acquisition by women, the Deputy Prime Minister acknowledged the existing practice requiring women to acquire property through a male relative, because women could not acquire land directly, and indicated that the Office had put in place programs to address equal opportunities for women.
39. On the issue of gender based violence, it was noted by the delegation that the Sexual Offences and Domestic Violence bill had been pending in the Parliament for ten (10) years. In response it was reported that the bill had been finalized and would hopefully be adopted by the current 10th Parliament. It was also noted that female genital mutilation (FGM) is not practiced in Swaziland. It was also reported that the Government had put in place a number of programs to address all forms of violence against women, including the establishment of the One Stop Centre which address such abuses.
40. On the issue of child marriage and pregnancies, the delegation was informed that this is a prevailing concern in Swaziland, it was also noted that programs and activities had been developed to provide assistance and protection to vulnerable children. The delegation also informed of the draft Children's Protection and Welfare Act which prohibits child marriages, and further that training and seminars are conducted for Judicial Officers, in order to capacitate them to address the issue of child marriage effectively.

3. Meeting with the Minister of Foreign Affairs & International Cooperation

41. The delegation met with the Minister of Foreign Affairs & International Cooperation, **H.E. Chief Mgwagwa Gamedze**. During the discussions that ensued, the following issues were raised: ratification of outstanding human rights instruments; submission of outstanding periodic State Reports; and clarification of the channel of transmittal of correspondences to the State in relation to Communications pending before the Commission; and the protection of the human rights of lesbians, gays, bi-sexual, transgender and inter-sex (LGBTI) persons.

42. With regard to outstanding Periodic Reports, the Minister expressed the Government's willingness to ratify all relevant human rights instruments, and to submit its outstanding Reports to the Commission.
43. With respect to the rights of LGBTI persons, it was reported that LGBTI persons in Swaziland have access to services, such as health and education and are not discriminated against or prosecuted. He further noted the need for the education and sensitization of the society to accept the existence of LGBTI persons.

4. Meeting with the Minister of Justice and Constitutional Affairs

44. The delegation met **H.E. Mr. Edgar Hillary**, the Minister of Justice and Constitutional Affairs, with senior officials in the Ministry in attendance.
45. During the discussion, it was acknowledged that the law reform process in the country had stalled, and further noted that the Parliament had the duty to take the lead in the law reform process. It was also reported that the Ministry had plans to set up a constitutional review or law reform unit, which would be dedicated to the law reform process. However, it was noted that the number of pending draft legislation was low, due to a lack of legal drafters, which impacted the development of requisite draft legislation.
46. Regarding reports of delay by the Ministry in sending draft laws to Parliament, it was noted that Parliament needs to prioritize bills, and to develop an annual legislative program, in order to ensure that laws were adopted at a faster pace.
47. Regarding the Judiciary, it was noted that the Government was in the process of recruiting additional Judges, which would assist in reducing the backlog of cases. It was further noted that the Government is committed to constructing new courtrooms and providing adequate infrastructure and facilities for the Judiciary, but was hindered by limited resources. Other issues highlighted in this regard are the possibility of creating geographical divisions in the High Court to facilitate case handling, as well as the recommendation by the World Bank to the Government to cut down on wage bill, which impacts recruitment. On the procedure for appointment of Judges, it was noted that the Judicial Service Commission had developed its own process for appointment of Judges.
48. Concerning the independence of the Judiciary, it was noted that this is constitutionally guaranteed, and entails both administrative and financial independence. However, with regard to its budget, it was noted that this is submitted by the Chief Justice to the Minister of Justice, who presents it to Parliament, owing to the fact that the Chief Justice does not appear before Parliament.
49. In closing, the delegation underscored the importance of submitting Periodic Reports to the Commission, in accordance with obligations under the African Charter and the Maputo Protocol.

5. Meeting with Honourable Mr. Phiwayinkhosi Mabuza, sitting in for the Minister of Information, Communications and Technology

50. The meeting was held with **Honourable Mr. Phiwayinkhosi Mabuza** and senior officials in the Ministry of Information, Communications and Technology (ICT). During the meeting, it was noted that the Ministry was responsible for efficient national information, communications and the technology delivery framework, in order to ensure access to ICT. In terms of legislative framework, particularly the Broadcasting and Corporation Bill and the Broadcasting Bill, it was reported that these draft laws would liberalize and open up the media space, and establish an enabling environment for the media, at the levels of public, private and community broadcasting, in the country. It was also reported that the two bills were being merged for presentation to the new Parliament.
51. On the law reform process in the country, it was reported that the existing laws on the media needed to be brought in conformity with the Constitution (2005) and Swaziland's treaty obligations, noting that this fell within the mandate of the Ministry of Justice & Constitutional Affairs. With respect to concerns on the Media Communications Bill, the delegation was informed that that this draft law emphasized the need for educational qualifications of journalists and provided for a minimum remuneration for journalists.
52. The delegation was informed that the Public Service Broadcasting Guidelines were developed in response to abuses observed, where radio stations were used for electoral campaigns and defamatory exchanges. It was reported that the Guidelines stipulated the need for permission from the Constituency of the concerned Member of Parliament for the requisite airtime, which was meant to create order and to ensure a balance in the range of issues being discussed, rather than to curtail free expression.

6. Meeting with the Minister of Natural Resources and Energy

53. The delegation held a meeting with the Minister of Natural Resources and Energy, **Honourable Senator Jabulile Mashwama**, and senior officials in the Ministry.
54. The delegation was informed that Swaziland engages in the mining of gold and coal, while it also has diamond, asbestos and iron ore which are yet to be explored. The delegation learnt that Swaziland is taking measures to ensure that the revenues from the oil and gas extracted in the country are used for the benefits of all the citizens, and in this regard, it has put in place laws and policies to regulate the industry, including the Constitution and the Mines and Minerals Act (No. 4 of 2011). The delegation also learnt that the Constitution provides guidance on the exploration of minerals in the country, stipulating amongst others, ownership of minerals, and the right to property and compensation in case of expropriation. On its part, the Mines and Minerals Act was reported as incorporating all relevant best principles and practices; however, it was also noted that the subsidiary legislation to the Act had not been adopted. It was also reported that Swaziland had been admitted as a full participant of the Kimberley Process, since 2011.

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55. It was also reported that a multi-stakeholders Minerals Management Board (the Board) had been set up, which appraised applications for mineral concessions, and reports directly to Government. The Board was established in terms of the Constitution, and consisted of the Commissioner of Mines, mine engineers, economist, legal practitioner and three other persons all of whom, including the Chairperson, were appointed by the King on the advice of the Minister for Natural Resources. The Commissioner of Mines was the only legally authorized person in terms of the Constitution to administer the provisions of all mining legislation, and was the authority who issued mining licenses, in addition to being the overall administrator of all mines in the country. A person who sought to acquire a mineral right would apply to the Commissioner of Mines, who would then present the application to the Board for consideration.
56. Concerning prior consultation of affected communities, it was reported that this is conducted by the Office of the Commissioner of Mines, in an open and transparent manner, but that members of such communities were not represented in decision-making bodies regulating mining concessions. It was also reported that prior Environmental Impact Assessment and Comprehensive Mitigation Plans were required to be developed in advance of the mining projects, and that the relevant reports were discussed in a fully open and transparent manner, with room for all stakeholders to give contributions. Furthermore, it was noted that these assessments were conducted throughout all the phases of the mining concession.
57. On land ownership and the impact of the extractive industries, it was noted that while individuals owned land, they do not own the natural resources, as these belong to the whole nation. It was also noted that there were instances where the natural resources had been found on Swazi nation land, which was held by the King in trust for the people. It was reported that in all cases, fair compensation was paid, and due resettlement was made, and that when a request was received for natural resources extraction, the land was re-zoned, and the appropriate means for compensation was agreed and distributed to the affected people.
58. Concerning land ownership generally, the delegation learnt that, under the *tinkundla* administration, the Chiefs allocate land to Swazi citizen. With regard to access to land by women, it was reported that women can own land privately in their own name, however required their spouse's consent to dispose of land. Commonly owned property also reflected the names of both husband and wife, and required their joint consent for disposal.
59. On the distribution of the revenue from natural resources, it was reported that 25% of this goes to the Swazi government, 25% to the King in trust for the people, and 50% to the mining company. Additionally, it was noted that the mining companies have a legal obligation to invest in the local community where the resources are being extracted, in projects which are responsive to the local population, and that Guidelines existed for this purpose. Further the companies or investors were required to submit quarterly reports to the Commissioner of Mines. It was also reported that the Ministry of Natural Resources submits quarterly reports to Parliament on the concessions granted, licenses paid and revenues received from the mining industry.

7. Meeting with the Speaker of Parliament

60. The delegation met with **Honourable Themba Msibi**, Speaker of Parliament. During the meeting, the delegation learnt that Protocols and Conventions were submitted to Parliament by the Ministers, for endorsement, and the delay in bringing the various instruments, which had been ratified to Parliament for domestication, meant that Swaziland was behind in the domestication of a number of important instruments ratified by the country. Regarding the law reform process, the Speaker noted that Parliament depended on the Executive to bring bills before it for adoption by motion, but that the process was slow. Although the Speaker noted that this was in part addressed through enabling legislation operationalizing the provision of the Constitution envisaging private members' bills, this was not practicable due to the absence of an enabling legal framework and the financial implications involved.
61. Regarding the oversight role of Parliament, while noting in general that this is similar to what obtains in other jurisdictions, the Speaker noted a number of challenges, including lack of effective separation of powers and lack of financial autonomy. On separation of powers, the Speaker noted that this was still a challenge and undermined the work of Parliament in its oversight role over the Executive. For example, he noted that a new position for a Minister responsible for Parliamentary Affairs was created by the Parliamentary Service Act (2015) (PSA), and that currently the Prime Minister served as the Minister for Parliamentary Affairs. It was noted that these caused problems with the Speaker over the control and running of the Parliament. It was also noted that the PSA gives the Office of the Prime Minister power over Parliament, which creates the problem of embedding the Parliament in the Executive, as opposed to operating independently and effectively.
62. On financial autonomy, Speaker Msibi noted that the Parliament does not have control over its budget, but requires the approval of the Prime Minister for its expenditure, including for relevant meetings. He noted that the Parliament cannot influence or amend budgets presented to it by Cabinet; instead it merely received and adopted the Budget upon justification. Accordingly, the Speaker noted that the Executive enjoyed discretion in setting the priorities for the Budget.
63. In response to a query from the delegation on the role of Parliament in ensuring respect for the Bill of Rights enshrined in the Constitution, it was noted that lack of knowledge on the part of the Members of Parliament on exercising their mandate meant that motions for discussion regarding human rights issues were not raised, and that without these motions being raised, Parliament could not follow up on implementation of the rights enshrined in the Constitution. However, he noted that Members of Parliament consult regularly with their respective constituencies.
64. Regarding the impact of the political party representation, it was observed that political parties were not necessary for parliamentary effectiveness, and that if Members of Parliament were sensitized on their oversight role, they could effectively carry out their mandate even within the framework of the current

Constitution of Swaziland, and further that Members of Parliament could better rally around particular issues without the constraints of party politics.

65. On the Public Service Guidelines, after noting that it was necessitated by the need to ensure equitable access during the 2013 elections, the Speaker noted that the application of the Guidelines should have stopped. He further noted that the matter was still being discussed in Parliament, and also that he was not aware of any journalist being arrested for speaking to a Member of Parliament. He also reiterated the importance of journalists doing their work with integrity, and being non-partisan.
66. On the reporting lines of the Swaziland Commission on Human Rights and Public Administration/Integrity and the Elections and Boundaries, it was reported that the two bodies did not have direct access to Parliament; rather their reports were jointly submitted to Parliament by the Ministry of Justice & Constitutional Affairs. Given the provisions of the Constitution providing for direct reporting to Parliament, it was observed that enabling these bodies to present their reports directly would be a means of guaranteeing their independence.

8. Meeting with the Chief Justice

67. The delegation met with the Chief Justice, **Honourable Justice Bheki Maphalala**. During the discussion on allegations of corruption in the Judiciary, it was reported that prior to the current Chief Justice's appointment in May 2015, there had been some challenges with the Judiciary which had resulted in animosity between the Executive and the Judiciary, in addition to establishment of an inquiry into the conduct of the former Chief Justice, and his subsequent removal from office upon recommendation by the Judicial Service Commission. The delegation was also informed that there had been one case of corruption involving the former Chief Justice, the former Minister of Justice and a High Court Judge. Following the Commission of Inquiry established by the King to look into the allegations, both the Chief Justice and Minister of Justice were dismissed, and the High Court Judge was suspended.
68. On the independence of the Judiciary, it was reported that the Judiciary was independent in discharging its mandate. The Chief Justice noted that there had been one instance of Executive interference with the Judiciary in 2002 when the Government decided not to implement a decision of the Supreme Court, which culminated in the resignation of all the Supreme Court Judges. Regarding the appointment of Judges, it was noted that the Chief Justice had ensured that all foreign Supreme Court Justices who were beyond the retirement age were retired, in accordance with the Constitution.
69. On financial independence, it was reported that the Judiciary submitted its budget to the Minister of Justice & Constitutional Affairs, who presented this to Parliament. The delegation learnt that the Judiciary received the lowest allocation by Parliament in adopted Budget of March 2016, which was indicative of the priority accorded to the administration of justice.

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70. The Chief Justice reported that he was currently in the process of assembling a permanent bench of local judges for the Supreme Court before its first seating in May 2016. It was also noted that the Supreme Court sits only twice a year; however due to the existing backlog of cases, it had been proposed that the Supreme Court should sit throughout the year.
71. On the backlog of cases in the Judiciary, the problem was attributed to constraints facing the Judiciary, including the lack of sufficient funds for continuous legal training to Judges and the shortage of Judges in the country. It was noted that there were previously only about two to three High Court Judges, and as at 2015 only six High Court Judges for the whole country, which resulted in a backlog dating as far back as 1994 for civil cases and 2000 for criminal cases. The Chief Justice further noted that approval had been granted from the Executive for four additional posts, bringing the number of Judges to ten since late 2015; while noting that this number was still less than the constitutionally required minimum of fifteen. The delegation was also informed that there were twenty Magistrates for the whole country, covering the four regions, which was also inadequate.
72. Another challenge highlighted was the lack of institutional independence of the Judiciary, despite the fact that the Constitution provides for administrative and financial independence. It was noted that the Judiciary requires authorization from the Executive, which inhibits expeditious hiring of new judges. It was reported that the Chief Justice was waiting for approval of request made in October 2015 for five posts for High Court, seven for Supreme Court, three for Industrial Court and five for Industrial Court of Appeal.
73. Additionally, it was reported that currently there was no permanent bench for the Industrial Court of Appeal, and as a result High Court Judges had to sit as acting Judges of the Industrial Court of Appeal. Hence the need for the autonomy for the Judicial Services Commission to recruit the positions required in the Judiciary was stressed. On the quality of recruits, it was noted that Judicial Officers were poorly remunerated, which made it difficult to attract and recruit the most competent and knowledgeable candidates, owing to poor terms and conditions.
74. Additionally the lack of courtrooms was highlighted as a factor contributing to the backlog of cases. The High Court Building, situated in the Chief Justice's Office, was also used by the Supreme Court, the Industrial Court and the Industrial Court of Appeal. It was also noted that the Magistrate Courts were in need of additional courtrooms. To resolve this challenge, the Chief Justice reported that he had applied to the Executive to set aside funds to build separate structures for the different Courts.
75. As part of the effort to address the impact of the backlog on pre-trial detainees, the Chief Justice reported that procedures were initiated to ensure their expeditious release. The delegation was also informed that there were currently no political detainees or prisoners in the country.
76. Lastly, on the separation of powers and the independence of the Judiciary vis-à-vis the ultimate decision making power of the King over all three arms of Government,

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the delegation was informed that in practice, the King relies on the advice of the three arms of Government, and therefore decisions were taken after the views of relevant actors were consulted. Concerning the related issue of the 2011 Directive which protected the King from lawsuits, and pursuant to which all cases involving the King were not admitted in Court, it was reported that this was a directive from the former Chief Justice, and not the King or the Judicial Services Commission. To this end, it was noted that the compatibility of the Directive with the Constitution was being examined.

9. Meeting with the Under Secretary in the Ministry of Labour and Social Security

77. The delegation held a meeting with the Under Secretary in Ministry of Labour and Social Security, **Mr. Norman Gamedze**, and two senior officials from the Ministry.
78. It was reported that the Ministry's responsibilities included labour administration, industrial relations and national human resources, planning and development, with the Ministry working to improve the standard of living through the provision of decent work and social protection. The core activities of the Ministry include improving economic growth through, ensuring an educated and skilled nation, social dialogue, harmonious industrial relations, protection and empowerment of vulnerable groups through social security and improved service delivery through decentralization of services. The Ministry's structure is comprised of the Departments of Labour, National Employment Service and Social Security, in addition to a National Steering Committee on Social Dialogue, a Labour Advisory Board, a Conciliation, Mediation and Arbitration Commission, a National Provident Fund and an Essential Services Commission.
79. On applications for the registration of trade unions, it was reported that all trade unions in the country were registered, with the exception of Amalgamated Trade Union of Swaziland (ATUSWA), which required additional information of general nature, and would be duly registered once the requested information was provided.
80. With regard to social security, the delegation was informed that the Social Security Board managed the Provident Fund, and the International Labour Organization (ILO) had provided assistance in establishing this Fund. On the existence of a legal framework, it was noted that the Ministry intended to establish a workman's compensation fund through the Workman's Compensation Insurance Fund Bill, and furthermore that the Attorney General's office was in the process of drafting a National Pension Fund Bill, which would convert the providence fund to a pension fund.
81. It was also noted that the right to strike was protected in the country, as provided in the Industrial Relations Act, albeit subject to certain procedural requirements. It was noted that any strike organized had to relate to terms and conditions of employment, Government policy and socio-economic issues relating to workers' rights, and not on civil or political related issues. Furthermore, the delegation learnt that the Ministry was reviewing the Public Order Act, with the assistance of the ILO, to effectively address issues related to public order and strikes.

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82. On child labour, it was noted that the Ministry's National Plan of Action contained provisions to address child labour; however the issue is not prevalent in the country.
83. In closing the delegation learnt that the key contentions between the Government and trade unions pertain to police brutality, freedom of association, and registration issues. It was also noted that codes-of-conduct were being drafted for all stakeholders.

10. Meeting with the Director of Management Services in the Ministry of Public Service

84. The delegation met with the Director of Management Services, in the Ministry of Public Service, **Mr. Maxwell Masuku**.
85. On the lack of judges in the Judiciary and its effect on the large backlog of cases and lack of access to justice in the country, the Director recognized the need for additional judges. He reported that the Ministry allocates new positions once during a fiscal year on the basis of the budget allocated to it, and that a decision had been taken by Cabinet to the effect that no new positions would be created in any of the Ministries. Following a meeting on prioritizing the most urgent needs in the Judiciary, the Chief Justice requested the appointment of judges on a temporary basis. Accordingly the Director reported that by 01 April 2016, half the number of positions required in the Judiciary would be filled with temporary judges.
86. On to the lack of courtrooms, the Director noted that this fell within the portfolio of the Ministry of Public Works and Transport, which was responsible for the construction of the additional court rooms required by the Judiciary.
87. In conclusion, the Director noted that the expected budget for the Ministry had significantly declined, and accordingly the unfilled positions in the Judiciary and other offices, was not deliberate, but the result of the current financial situation in the country.

b) OTHER STAKEHOLDERS

1. Meeting with the Commissioner of Police

88. The delegation met with the National Commissioner of the Royal Swaziland Police Service, **Mr. Isaac Mmemo Magagula** and other senior Police Officers.
89. The Commissioner of Police informed the delegation that significant efforts were being made to ensure that policing was done in accordance with the Constitution and all applicable laws, but in reality there were instances which required the application of some measure of force, to ensure security, law and order in the country. It was reported that the number of women in the Police force had increased, including in the position of the Principal Assistant, one out of every three officers in senior positions being female, and with female officers holding 4 out of the 9 strategic portfolios in the senior management of the Police Force.

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90. With regard training of the Police, it was reported that the curriculum of the Police Academy included human rights training, all subsequent training conducted included content on human rights, and periodically specifically tailored training addressing human rights issues in policing were held.
91. With reference to torture, it was noted that allegations of torture had been reported; however this was considered unacceptable as it tarnished the image of the Police. Accordingly, there were policies and training activities conducted for the Police which emphasized that torture was unacceptable. The principle of 'investigation before arrest' was stressed, which required collection and collation of evidence, as opposed to obtaining confession under duress.
92. With respect to the mechanisms for handling allegations of torture, it was noted that these allegations were investigated through the Internal Discipline and Investigations Unit, following which the matter would be referred to the Director of Public Prosecution (DPP). Culpability following such investigation could result in professional discipline, arraignment in court, and upon conviction dismissal from the Police Force, as may be applicable. It was however noted that there is no Independent Directorate for handling such investigations, but rather, police-driven investigations.
93. In response to the question whether there were independent mechanisms to investigate torture, the Commissioner noted that, in cases of serious magnitude, inquests were instituted by the Prime Minister to investigate the allegations; however this did not preclude the Police force from conducting its own investigations. He further noted that private individuals had the right to institute investigations into allegations of torture, nor were civil society organizations proscribed from carrying out such investigations. The delegation further learnt that CSOs and other civil society actors were allowed to visit places of detention, and that the Swaziland Commission on Human Rights and Public Administration/Integrity could undertake independent investigations, and request for information from the Police. The delegation was also informed that there is a Victims support Unit and that the law provides for compensation for established cases of torture or infraction of the rights of suspects or detainees.
94. The exchange also highlighted some of the human rights issues involving the Police. These include corruption, torture, excessive use of force and the related issue of police brutality. The issue of accountability for such violations was also noted. In this regard, it was noted that cases took too long to be completed due to the backlog in the courts, and that there were at that time, sixty-five pending cases against Police Officers for various infractions including excessive use of force.
95. Regarding the adoption of national legislation for the prohibition and prevention of torture, it was observed that, whereas Swaziland had ratified the Convention against Torture, the country was in the process of drafting 'anti-torture' legislation.
96. On pre-trial detention and prison conditions, it was noted that juvenile detainees and prisoners were separated from adults, hardened criminals from first offenders, and male detainees from females. It was also noted that while some of the detention

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and prison facilities were of colonial standards, a number met international standards.

97. Finally, in response to an enquiry about the death penalty, the Commissioner of Police informed the delegation, that while this was still in the statute books of Swaziland, it was not being implemented in practice.

2. Meeting with the Commissioner of Correctional Services

98. The delegation was received by **Commissioner General Mr. I.M. Ntshangase**, the Deputy Commissioner General **Commissioner Ms. P.M. Dlamini**, and other senior officers of His Majesty's Correctional Services.
99. In his briefing, the Commissioner General noted that His Majesty's Correctional Services, mandated by the Prisons Act (1964), in addition to the Constitution of Swaziland (2005), had the mission to be an efficient and effective provider of security, rehabilitation, reintegration and community corrections. Regarding the composition of the Correctional Services, the Commissioner General noted that: it is made up of sixteen (16) centres across the country, comprising fourteen (14) correctional facilities, one (1) college and one (1) head office. The Correctional Services has two thousand and nineteen (2019) officers. There were three thousand three hundred and sixty-nine (3,369) offenders housed in the correctional facilities, although the actual capacity of the facilities is for two thousand, eight hundred and thirty-eight (2,838) offenders.
100. Regarding the treatment of offenders, the delegation learnt that, prisoners are provided with three balanced meals, reasonable shelter with hot water, sleeping mats and beds, in addition to blankets and uniforms. They have medical and health facilities as there are clinics in all the Prison centres, operating 24 hours a day, 7 days a week, with qualified nurses and departmental medical doctors, and complicated cases being referred to Government hospitals. Inmates were allowed visits by loved ones and next of kin, and have access to information and communication including through telephone booths, television sets and the sending and receipt of letters. The prisoners enlisted in rehabilitation programs including formal education and vocational trainings including construction, welding, electrical wiring, painting and agriculture.
101. The delegation also learnt that juvenile offenders attend the same school with the children of the prisons' officials, and that they wear normal school uniforms and not prison uniforms to school, while their teachers also wear civilian clothing. It was reported that and their academic performances were very good.
102. The delegation was also informed that alternatives to sentencing are employed for first and second time offenders, with reasonable accommodation for their work and school schedules. The delegation also heard that there is a program for reconciling victims and offenders and resettling previous convicts.

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103. The challenges facing the Correctional Service that were highlighted include: shortage of professionals; inadequate operational equipment; budgetary constraints; and inadequate training opportunities as well as overcrowding.
104. It was also reported that out of a total prison population of three thousand five hundred and ten (3,510), only two hundred and fifty-five (255) were female. They are held in a prison facility with the capacity of 120 inmates. Out of the total population of women inmates, 57 had been convicted. It was reported that the percentage of women inmates with HIV/AIDS is 68%.
105. It was noted that due to a huge backlog of cases in the courts, there was a large number of inmates on remand who had pending cases, numbering about eight hundred (800), and that this contributed to the issue of congestion. However, it was indicated that efforts were being made to decongest the prisons, including through expansion of facilities and the use of alternative sentencing. In this regard, it was reported that a request had been made to the Government to construct an additional centre in *Lubombo*, and also that the Correctional Services Bill had been tabled before Parliament, which would give greater leeway for sentences to be served as community services, and thus ease congestion in prisons. Concerning prisoners on death row, it was noted that currently there was only one (1) death row inmate, as the King had pardoned the rest, with their sentences commuted to life sentences.
106. On HIV/AIDS in the prisons, the delegation was informed that the population of persons living with HIV in the prisons was slightly above fifty per cent (50%) of the prison population, and that this puts a lot of strain on the facilities. Screening is conducted upon admission into incarceration through voluntary testing and appropriate counselling.
107. The Commissioner also noted that journalists and NGOs were allowed to visit the Prison Centres; however they had to inform the Public Relations office of the date for the intended visit, prior to the visit.

3. Meeting with the Election and Boundaries Commission

108. The delegation had a meeting with Commissioners and staff of the Election and Boundaries Commission (EBC), and was received by the Chairperson of the EBC - **Chief Gija Dlamini**, 2 Members of the EBC, and the Acting Head of the Secretariat.
109. During the meeting, the delegation was informed that the EBC was established by virtue of the Constitution (2005), which also stipulates its mandate and composition. Whereas the Constitution provides for 5 members, the EBC was currently composed of only 3 Members, due to the death of one member, and the appointment of another as a High Court Judge in 2012, consequent to which their positions were vacant. It was however noted that the EBC had the requisite quorum to conduct its work. Also, it was noted that the appointments into EBC were done by the King, on recommendation of the Judicial Service Commission.

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110. The EBC's functions include: overseeing the registration of voters; ensuring fair and free elections; and reviewing the boundaries of *tinkhundla* areas, that is, constituencies, for purposes of elections.
111. With regard to the non-participation of political parties in elections, it was explained that this was the preference of the majority of Swazis, who were comfortable with direct representation based on individual merit, as opposed to representation through political parties. The matter had been decided during consultative meetings with citizens on three occasions, with the citizens rejecting the proposal for the establishment of the political party system.
112. It was also noted out that the electoral system did not bar people from organizing in political parties. Members of political parties could contest in elections, albeit on an individual basis and not as party candidates, and could therefore exercise their rights to freedom of association and to political participation. With regard to recent calls for the right to contest elections through political parties, as provided for in Sections 24 and 25 of the Constitution, the Chairperson noted that this was outside the mandate of the EBC. While noting that the matter had not been subjected to a referendum, it was pointed out that during previous consultations, citizens had expressed concerns on the risks of potential divisions and equality of opportunity for citizens to contest elections.
113. Regarding the *tinkhundla* system, it was noted that this is a constituency based system whereby the country is divided into 55 constituencies each of which have polling centres where local government, Executive and the Parliamentary elections were conducted. During elections, at the *tinkhundla* level, voters would elect delegates to serve in the House of Assembly and Senate from among candidates, in a secret ballot.
114. Regarding reforms introduced before the last elections, 6 electoral acts came into force in 2013, namely: the Elections Act; the Elections and Boundaries Commission Act; the Elections Expenses Act; the Voters' Registration Act; the Senate (Elections) Act; and the Parliament Petitions Act. The laws had introduced secret-ballot voting, the counting and announcement of election results on the same day, open nominations of candidates. It was noted that the EBC was implementing the recommendations from the African Union, the Southern African Development Community and other stakeholders, in order to improve its working methods.
115. It was also noted that there was under representation of certain vulnerable groups, including women, the youth and the disabled. It was noted that despite civic and voters education conducted for women, female candidates in the 2013 elections still performed very poorly. He also highlighted that the budgetary constraints of the EBC limited the support it could give to women candidates and for the desired civic education, research and public relations works.
116. Furthermore, on the representation of women in Parliament, it was noted that Article 86 of the Constitution requires that if the 30% minimum representation of women is not met, 4 women should be appointed to the House by Parliament.

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However, these appointments had not been made despite the failure to meet this minimum requirement in the 2013 elections.

117. Lastly, on civic and voters' education, it was further noted that any CSO which wanted to conduct this exercise was free to do so, following accreditation from the EBC.

4. Meeting with officials of the Swaziland Commission on Human Rights and Public Administration/Integrity

118. The delegation also met with the Acting Chairperson, **Mr. Sabelo Masuku**, Commissioners and the Executive Secretary of the Swaziland Commission on Human Rights and Public Administration/Integrity (SCHRPA) which is country's the National Human Rights Institution (NHRI).
119. The delegation was informed that the SCHRPA was established under the 2005 Constitution, with the first Commissioners appointed into office in 2009, and the SCHRPA Secretariat established in 2015. The Commissioners were appointed by the King, on the recommendation of the Judicial Service Commission, for the following terms: Commissioner – 5 years renewable once; and Deputy-Commissioner – 7 years renewable. The SCHRPA was awaiting the adoption of its enabling legislation, the Human Rights Bill (2011), which was expected to address, among others, the operational and financial independence of the SCHRPA.
120. Regarding its mandate, the delegation learnt that the Commission receives and investigates complaints of human rights abuses from the public, can initiate investigations *proprio motu*, or upon request by Parliament. Following such investigations, it can issue reports and make recommendations. It also has the power to mandate the release of relevant information for purposes of such investigations. However, its jurisdiction excludes: matters before courts of law; matters designated by the Constitution as royal prerogatives; and inter-governmental issues. The delegation also learnt that the SCHRPA is mandated to submit annual reports to Parliament.
121. Concerning its relationship with the Government, it was noted that the NHRI invites Government officials as parties to matters before it and advises Government as the duty bearer of the rights of the Swazi people. It is also consulted in the preparation of State Reports, but as the State has the final say, it can prepare its own alternative or shadow reports.
122. On legislative reform, the absence of a clear structure and process for the required law reform was noted. It was noted that there was a UNDP supported law review or reform exercise from 2008 to 2009, following which a number of draft bills emerged. The need for further sensitization of the Parliament, as well as the Ministry of Justice, for pursuing law reform was also noted.
123. On political parties and freedom of association, it was reported that the SCHRPA had received a complaint from political parties regarding non-registration; however

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the complainant had not pursued this case, as a result of which the SCHRPA had not been presented the opportunity to pronounce itself on the issue.

124. Regarding freedom of expression, it was noted that there was a pending case before the Supreme Court challenging the Terrorism Act, and that there were also on-going processes of amending laws which contradicted the right to freedom of expression, such as the draft bill on the Public Order Act.
125. In concluding the meeting, it was noted that the SCHRPA was faced with a number of challenges, including insufficient resources to enable it to carry out its mandate, lack of financial autonomy given that the NHRI has to go through the Ministry of Justice and Constitutional Affairs to obtain its funds, and the delay in the appointment of key staff of its Secretariat. It was also noted that the enabling legislation was required in order for the SCHRPA to function effectively.

5. Meeting with officials from the National Emergency Response Council on HIV/AIDS

126. The delegation met with the Executive Director, **Mr. Khanya Mabuza**, and members of the Senior Management team of the National Emergency Response Council on HIV/AIDS (NERCHA).
127. The delegation was informed that NERCHA was created to coordinate and facilitate the national multi-sectoral HIV/AIDS response, in addition to overseeing the implementation of the national strategic plans and frameworks for responding to the pandemic. NERCHA was established through an act of Parliament; the National Emergency Response Council on HIV/AIDS Act No. 8/2003.
128. It was reported that the country has a prevalence rate of 26%, and in this regard noted that many people were living long after being diagnosed with HIV, which was credited to NERCHA's programs and the Government's political will to address the disease. NERCHA's programs from 2003 to 2005 had focused on scaling up treatment, in order to address the high death rates which were observed in 2003. It was also reported that NERCHA had a very a good success rate in addressing mother to child transmission, which was scaled down by 96%, while noting that this intervention had imposed a huge financial burden on the health care system.
129. One of the issues affecting the life expectancy of people living with HIV was noted as the high poverty rate in the country. New infections were attributed to: risky sexual behaviour; gender-based violence; failure of most men to test even though they were the highest transmitters; inter-generational sexual intercourse; and transactional sex. Furthermore, the high transmission rate from men to young women, aged between 15 and 24 years old, was noted, caused by the lack of testing of the adult men, followed by unprotected sex with young women. On the other hand, it was noted that boys aged 18 years old and below, had a 0% infection rate.
130. Additionally, it was reported that women were disproportionately affected with the disease, with a higher percentage of infection of 4.1%, and in this regard, the need to provide economic opportunities for women in the country was highlighted, in addition to addressing the economic dimension and drivers of the scourge,

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especially its prevalence among women and girls. The prevalence of gender-based violence was noted, with reports that 1 in 3 women in the country experienced sexual violence before they turned 18 years old.

131. It was reported that there was a low rate of participation of women and young girls in NERCHA's programs, and further observed that this could result in increased infection rates. Further, NERCHA had invested in programs targeting young people, given that the youth made up over 60% of the population of Swaziland.
132. The following information was also noted: the enabling legal and policy framework to address HIV/AIDS in the country includes the Constitutional provisions on equality and non-discrimination, and the HIV/AIDS Policy (2006); one of the limitations of the HIV/AIDS policy was the lack of distribution of condoms in correctional facilities; stigma and discrimination against persons living with HIV (PLHIV) was noted as a challenge which sometimes results in the suicide of PLHIVs, and in this regard NERCHA was working with the network of PLHIVs on addressing stigma in the workplace and other places in the community; NERCHA's work included reaching out to commercial sex workers and LGBTI, specifically men having sex with men (MSM) in order to address the prevalence rates among them, and also to ensure provision of care to these vulnerable groups; NERCHA had prepared a Legal Assessment Environment Report, due to be presented to the Government, which called for a review of Government programs to include LGBTI persons; and there had been sporadic reports of forced sterilization of HIV positive women which should be addressed by the Ministry of Health in a more concerted manner.
133. With regard to polygamy, it was reported that there was less than 2% infection among men in polygamous marriages. However, it was observed that in general more should be done to get men to test for HIV, and if required to start treatment. In this regard, the inconsistent use of condoms by men who are not aware of their status was noted as a key issue which invariably results in the spread of the disease. It was further noted that, approximately 60 to 70% of men are uncircumcised, as this is not part of the Swazi culture, which further contributed to the spread of the disease.
134. In closing, it was noted that NERCHA was committed to ensuring the Government's goal of attaining 0% prevalence by 2022 was achieved.

6. Meeting with the Ambassador of the European Union Delegation to the Kingdom of Swaziland

135. The delegation held a meeting with the European Union Ambassador to Swaziland, **Mr. Nicola Bellomo**. During this meeting, Mr. Bellomo raised a number of issues of concern. Regarding pending legislation, he noted that the Sexual Offences and Domestic Violence Bill did not have provisions criminalizing marital rape, and further noted the lack of progress on amending the Public Order Act and the Suppression of Terrorism Act, which both had provisions limiting human rights. Additionally, he noted with concern the provisions of the Public Services bill, which

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would have the effect of limiting the rights of civil servants, and further raised the issue of the lack of representation of women in the current Parliament.

136. It was reported that that the EU office had supported the Universal Periodic Review (UPR) process, and had also submitted a shadow report. Additionally, the untapped renewable energy potential in the country was noted, which could increase domestic power generation. The need for new measures specifically geared towards encouraging the sugar industry to invest in energy-efficient machinery and equipment to boost bagasse-based electricity production was highlighted in this regard.

7. Meeting with the UN Resident Coordinator, United Nations Development Program (UNDP)

137. The delegation met with the UN Resident Coordinator in Swaziland, **Mr. Israel Dessalegne**.
138. In the meeting it was noted that UNDP's programs included strengthening the capacity of key institutions, for example strengthening oversight bodies such as the Parliament. In this regard, it was reported that UNDP was providing support to Parliament in development of its strategic plan. With regard to domestication of the Conventions signed by the Government, it was noted that this process was prolonged as a result of the system of Government which combined modern and traditional forms of governance. It was also noted that, within the limits of its mandate, UNDP provided support to CSOs in the country.
139. It was also noted that UNDP works very closely with the Judiciary. In this regard, it was reported that UNDP had assisted with the development of a case management system; however further noted that a systematic and comprehensive analysis of the needs of the Judiciary was required in order to determine which areas to provide assistance.

8. Courtesy call on the Vice Chancellor of the University of Swaziland

140. The delegation met with Vice Chancellor of the University of Swaziland, **Professor Cisco Magagula**, in addition to some members of Faculty and law students.
141. During the meeting, it was noted that the University engaged in research on various topics, including providing expertise on governance and policy related issues where requested such as contributing to the curriculum for the Police College training on human rights and constitutional issues, participating in discussions on the Children's Protection and Welfare Act (2012), and participating in a research project on rule of law and justice in Swaziland.
142. It was reported that law students were exposed to the regional human rights system in courses such as Public International Law, and were encouraged to participate in the annual All-African Moot Court Competition.

143. During the discussion, it was observed that the academic space was reported to be shrinking, given that academicians exercised self-censorship on issues such as separation of powers and the issue of political parties.

9. Meeting with the Law Society of Swaziland

144. The delegation met with the Treasurer of the Law Society of Swaziland, **Mr. Lucky Howe**, and **Mr. Nkosiwathi Manzini**, a member of the law society.
145. During the discussions, reports were received on the challenges being faced by the Judiciary. It was noted that the Judiciary faced acute shortages of facilities and resources including: shortages of magistrates and judges; lack of electricity in some courtrooms; lack of recording equipment in some courtrooms; inadequate furnishing and lack of security in the magistrate's chambers; very poor facilities in the courtrooms in rural areas; in addition to inadequate management of the available resources, Judges and staff of the Judiciary. An example was given of litigants going to Court expecting to receive a judgment, but finding the courtrooms empty because the Judges did not sit on that day.
146. Additional issues noted included, lack of access to court's records, failure to allocate matters to the correct Judge, poor governance and inefficiency.
147. On legal aid, it was reported that a draft Legal Aid Bill had been developed following a UN led process, but this law had not yet come into force. It was reported that the Law Society was not appropriately consulted in the drafting of this Bill, and that while there is no substantive legal framework for legal aid yet, about 40% of the work done by lawyers in Swaziland was *pro bono*. It was noted that the *pro deo* counsel currently offered by the State in capital cases was grossly under-paid. The inadequate capacity of the Government to appropriately finance the legal aid scheme, when it comes into force, was also highlighted.
148. Concerning the issue of separation of powers, the view was expressed that this can never be the reality in the country, given that the ultimate authority belongs to the King. An example was given of the vote of no confidence that was passed against the Prime Minister, but reversed by the King.
149. Finally, on the issue of political parties it was noted that during a *Sibaya* gathering in 2012, citizens expressed their interest in multi-party democracy; however the Report of the meeting was not released to the general public. Accordingly, the representatives of the Law Society noted that they had taken the matter to Court, seeking the release of the 2012 *Sibaya* report.

10. Meeting with the Media Institute of Southern Africa (MISA-Swaziland)

150. The delegation held a meeting with the Media Institute of Southern Africa (MISA-Swaziland), led by **Mr. Alec Lushaba**, Chairman of MISA-Swaziland's National Governing Council, together with various representatives from media houses based in Swaziland.

151. During the meeting, it was noted that one of the main concerns was the lack of law reform to align laws related to the media in line with the Constitution (2005). While there a number of draft Bills had been developed by 2006, there had been no progress in their adoption, except in the telecommunications industry, with the efforts towards de-monopolizing the industry. It was reported that the media is still heavily controlled by the State. With respect to the print media, there is still a lot of self-censorship. The delegation was informed that the law regulating community radio stations had not yet been adopted.
152. As regards defamation, it was noted that criminal defamation cases against journalists were not common; however there was the recent case of Editor Bheki Makhubu and human rights lawyer Thulani Maseko. It was noted that defamation cases against journalists were a means of suppressing and silencing the media. It was also noted that there are currently 33 laws which restrict the media and free practice of journalism in Swaziland. In this regard, it was pointed out that the Suppression of Terrorism of Act was used by the State to suppress dissenting views, in the name of combating terrorism.
153. Regarding the media, it was reported learnt that there were currently 2 major newspapers in Swaziland, 2 state broadcasters, 1 private TV station, 1 religious station, 2 periodical magazines and few other start-up print media. Apart from the Communications' Act, the Media and Communications Bill was pending in Parliament. It was also noted that the Swaziland Media Complaints Commission (MCC) has been in existence as the self-regulatory body of journalists and other media workers since 2013; however the Commission faces issues of lack of funding, visibility and government support.
154. Concern was also raised about the implications of the Media Commission Bill on the media in Swaziland. It was noted that while the Media Commission Bill had some positive elements, such as provisions for the training for journalists, the Bill could be used by the Government to regulate the media by requiring that only trained journalists would be licensed to practice in the country. Additional concerns were that the Bill required that journalists be licensed or accredited, and that the Media Commission would potentially compete with the Media Complaints Commission, the current self-regulatory regime. Other pending laws noted were the Swaziland Broadcasting & Cooperation Bill and Access to Information Bill which was developed in collaboration with the Ministry of Information, Communications and Technology in 2007, but were yet to be tabled before Parliament.
155. An additional concern raised was with respect to accessing information. It was in particular noted that the Public Service Broadcasting Guidelines blocked access to the media by regulating access to, and what Members of Parliament could say to the media. It was also noted that, Members of Parliament required permission from the Chief of a Constituency to obtain authorization to speak to the media on any particular issue.
156. On social media, whose reach remains limited, concerns raised include high data rates for internet access and the impact of the draft Electronic Evidence Act, which

threatened privacy given that the Government could potentially gather evidence from the electronic media and use private data by virtue of this law.

11. Meeting with representatives of Trade Unions

157. The delegation met with representatives of Trade Unions in Swaziland, in a meeting which was facilitated by the Ministry.
158. During the meeting it was reported that the issue of registration of trade unions in Swaziland had largely been resolved following the amendment of the Industrial Relations Act (2014). However, it was reported that there were outstanding concerns, for example the fact that no time frame was provided for the process of registration of trade unions after submitting an application, as a result of which the duration of the process was at the discretion of the Minister of Labour.
159. Another challenge noted was the lack of response from the Ministry of Labour in relation to reported complaints of human rights violations, and in this regard it was reported that the Ministry had only reacted to 2 out of 20 cases referred to it in accordance with the Employment Act.
160. On workers' wages, the situation of support staff employed in national schools, who had not been paid their salaries in over 5 months was raised. In this regard, it was noted that when the Government initiated universal primary education, schools began requiring parents of students to pay top up fees, because the amount of money allocated to the schools was too little, and that these top up fees were then used to pay the support staff. In response to complaints about this situation, the Ministry set up a task team to look into the matter, but the report of its findings was not made public.
161. With regard to domestic workers, it was reported that these were the most vulnerable in the employment sector given the difficulty in monitoring and assessing the situation of domestic workers in all households in the country. One development noted in this regard was the proposal for domestic workers to benefit from the Swazi Provident Fund; however this proposal was yet to be implemented.
162. On freedom of expression, it was observed that this was curtailed primarily through the Public Order Act, with the proposal this law be amended in order to address restrictions on freedom of expression in Swaziland facing the trade unions.
163. Regarding the registration of Trade Unions, it was reported that one organization, ATUSWA, was currently awaiting its registration, and in this regard. It was also reported that 50% of the registration issues on the application from ATUSWA had been addressed, but that there remained a number of issues to be finalized on the application, following which its registration would be completed.
164. A final issue noted was the Public Services Bill, which in effect prevented public workers from being active in trade unions and organisations, which the Government considers to be political. The Bill makes it an offence for a public officer to hold office in, or be visibly associated with a political formation or organisation.

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However, it was also noted that the Bill was still being discussed in the Portfolio Committee in Parliament. In closing, it was also noted the Employment Act was being reviewed to ensure that it met international standards for the protection of migrants.

12. Meeting with representatives of CSOs

165. The delegation met with representatives of diverse CSOs based in Swaziland, in a meeting which was facilitated by the Co-ordinating Assembly of Non-Governmental Organizations (CANGO – Swaziland).
166. Representatives of various CSOs present in the meeting briefed the delegation on various human rights issues in the country. It was pointed out that non-compliance with the various positive and progressive provisions rendered the Constitution ineffective. Various concerns were raised with respect to freedom of association, notably restrictions around registration of trade unions and their participation in political activism. More specifically, it was noted that the Public Service Bill, proposed by the Ministry of Public Service, would have a serious impact on the public sector, given that it would effectively curtail the rights of civil servants to participate in political activism, and speak on issues around socio-economic or political matters. Participants also observed that the exclusion of the political party platform as a basis for contesting election placed limitations on the scope of citizens' rights to freedom of association. They contested that the current position on political parties reflected the will of the people.
167. Representatives at the meeting also informed about the delegation of a pending bill on Chiefs, which would give more power to Chiefs, in addition to giving them immunity from lawsuits, noting that if this law was passed, it would have the effect of preventing access to legal redress in situations involving the Chiefs.
168. The delegation was informed that there were a number of issues affecting the enjoyment of women rights in Swaziland. Apart from the lack of a definitive and comprehensive law to cater for women rights issues, women were affected by the lack of coherence between existing law, customs, and the comments or edicts of the King. An example was given of a comment of the King on bride price, in which he stated that this could not be given back to the husband's family. It was noted that the effect of this statement was that it would be impossible to annul customary marriages, even after going through the established procedures for dissolution of customary marriages.
169. Other issues highlighted include discrimination against women in Government and public office despite requisite qualification, the lack of representation of women in the Parliament and Judiciary, the failure of Parliament to appoint 4 women to Parliament in accordance with the provisions of the Constitution on affirmative action, customary based exclusion of women from owning land themselves and the lack of parity in marriage. Representatives of women groups also pointed out the lack of progress of the Sexual Offences and Domestic Violence Bill, despite having been before Parliament for over 10 years. Regarding sexual health rights, it was reported that, in spite of Constitutional provisions which permit abortion in certain

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circumstances, abortion was criminalized in the country. It was further reported that half of the women in the **Mawelawela Correctional facility** had been imprisoned for the crime of illegally procuring an abortion.

170. Regarding the Sedition and Subversive Activities Act, it was reported that the sentences prescribed under this law were very severe, and that when a person was charged under this Act, the accused had the onus of proving that the intention was “not to be seditious,” thereby reversing the burden of proof.
171. The delegation was also informed about the state of children’s rights, with representatives in the meeting noting that the Child’s Protection Act was not being implemented in practice, and the National Children’s Coordinating Council which was established in the Office of the Deputy Prime Minister, had been disbanded. It was further noted that children with disabilities were not sufficiently protected by the Government.
172. Regarding socio-economic rights, the delegation was informed that 60% of the population were living in poverty. The delegation learnt that the country’s economy was essentially driven by agriculture, and that in light of the recent drought in the country, it was faced with a socio-economic crisis.
173. It was further noted that, whereas climate change was declared a national emergency, not enough was being done to address its impact on the lives of ordinary citizens, especially vulnerable groups. The delegation also learnt that the budget which was recently presented to Parliament did not speak to the concerns of Swazi citizens, as for example, vulnerable groups such as the elderly were allotted paltry sums, whereas the allocation of funds was heavily linked to projects of the monarchy. Regarding health rights, the delegation learnt that the Government was committed to the provision of medical care, including ARVs for persons living with HIV/AIDS, but lack of adequate funding resulted in the situation where medical facilities lacked the necessary infrastructure and basic medicine such as insulin, and the lack of adequate facilities in Mbabane hospital, for example it was reported that female patients were sometimes required to share hospital beds.
174. Regarding the Swaziland Commission on Human Rights and Public Administration/Integrity, it was noted that while it was established in 2009, staff to service the Commission were only employed in 2015. It was further noted that the Government had a history of interference with oversight bodies, and that for effective functioning of the NHRI, its enabling law should be enacted, in addition to adequate financial allocation for the effective discharge of its mandate.
175. With respect to education, it was noted that in spite of universal primary education, some schools demand money from parents, as a result of poor allocation of funds from the Government. The plight of pregnant girls was also highlighted, as they are not allowed to attend school while pregnant, thus denied the right to receive an education.
176. Some additional issues which were highlighted include: inadequate access to justice; the need for a legal aid system; attacks on human rights defenders; reports of deaths

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in custody; forced sterilization of women as a result of their HIV status; and the need for CSOs' engagement with the Commission, including through applying for Observer Status with the Commission.

c) **PRISON VISITS**

1. Visit to the Matsapha Correctional Centre

177. The delegation visited the **Matsapha Correctional Centre**, and met with the Deputy Officer in Charge, **Senior Superintendent Mr. Musawenkhosi Shongwe (SSP)**.
178. During the briefing, the delegation was informed that **Matsapha Correctional Centre** is the maximum security prison for adult male offenders in Swaziland, with a maximum capacity of **550 inmates**. He further stated that the prison houses a total of **864 inmates**, of whom 126 were maximum-security inmates.
179. The delegation was informed that the inmates were classified upon admission according to age, crimes allegedly committed and whether they are smoking or non-smoking. He further noted that in addition to Correctional Officers, the facility's staff includes a developmental psychologist and a chaplain. He noted that the facility offers education from basic to tertiary levels and vocational training for skills such as metal work and carpentry, among others.
180. The delegation physically inspected the prison facilities, observing that the prison, despite apparent overcrowding, contained cells in fairly good physical condition and cleanliness. The following was observed: inmates are provided with potable water from taps, both indoor and outdoor; there is an official registry of inmates with their basic information; there is a medical centre with 1 doctor and 3 nurses, which was observed as being rather small in relation to the number of prisoners in the Correctional facility; and there is a library and a shop where essential items are sold to inmates at reasonable prices. Other facilities in the prison include: the kitchen, where the food, including special diet, is prepared, with inmates fed three times a day; the skills acquisition units, including a bakery and a music academy, as well as provision of physical, psychological and spiritual care for inmates.
181. Additionally, the delegation learnt of the grievance procedures in place for responding to allegations and concerns by inmates, through meetings with inmates which are held weekly, or as often as might be required. This is overseen by a grievance procedure committee comprising social welfare, the chaplain and one senior officer at the prison, and inmates could request for the procedure to be initiated by lodging a request through the request book or with the officer-in-charge, or after serving their sentence.
182. Concerning HIV/AIDS in prison, the delegation learnt that HIV is a problem in the prison; however it was reported that the health facilities and services in the Correctional facility met the standards of the World Health Organization (WHO), with anti-retroviral drugs being distributed, and newly admitted inmates screened for HIV, Tuberculosis and other infectious diseases, helping to curtail pandemic. It was also reported that all relevant supplies are in place, allocated and monitored by

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the Ministry of Health, although condoms are not distributed in the facility. The inmates were also screened, monitored and treated for other life-threatening conditions including Diabetes and Hypertension. Furthermore, the delegation learnt that there had only been one incidence of outbreak of disease in the Prison.

183. With regard to challenges in the prison, the delegation was informed of two issues facing prison administration, namely the presence of contraband items and 'gangsterism.'
184. The delegation had the opportunity to interact with one prisoner privately. This prisoner highlighted a number of issues of concern to prisoners. He informed the delegation that treatment at the prison depended on the inmate's behaviour. For instance, a prisoner who violated the prison rules, such as engaging in 'gangsterism,' would be separated from the general population and placed in an isolated cell. The prisoner reported that he had enrolled in the educational and vocational opportunities available in the prison, and had passed his external examinations.
185. One of the concerns raised was the lack of separation of prisoners who had been rehabilitated and were responding positively to the programs, from hard-core criminals. The prisoner also noted that the issue of gangsterism in the Prison hampered its rehabilitation programs. On a personal level, he stated that he craved psychological counselling. Whereas his death sentence was commuted to life imprisonment in 2001, and under the new Constitution (2005) prisoners sentenced to life in prison served a period of 25 years, the prisoner reported that he would only be eligible for release when he was 75 years old, as he would serve the entire 25 years, in addition to the time he had already served. In response, a representative of the Swaziland Commission on Human Rights and Public Administration/Integrity present at the interview with the prisoner, committed to follow up on this matter with the Ministry of Justice and Constitutional Affairs.

2. Visit to the Mawelawela Women's Correctional Centre

186. The delegation also visited the **Mawelawela Correctional Centre** for female prisoners and met with the Officer in Charge, Mr. Meshack Simelane (SSP). During the briefing, the delegation learnt that the Correctional Centre had a prison population of 210 prisoners, in a prison with a capacity of 120 inmates. The composition of the prison population includes: 57 convicts, 133 juveniles, 16 remandees, and 3 on community service. There were also 12 babies being housed in the prison with their mothers.
187. The delegation visited the prison facilities, and observed the tidy houses where inmates sleep, the day-care facilities for kids, the skills acquisition centres including a hairdressing salon and a tailoring workshop where the uniform of the prison wardens, amongst others, are sewn.
188. The delegation also learnt that there are seven different dorms assigned to inmates according to the nature of the crime for which they are convicted or being held. The

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inmates are fed thrice a day. While the age of inmates ranges from 13 to 54 years old, juveniles are separated from adults and they attend school.

189. The prison has various services including vocational training or formal studies for the rehabilitation of inmates. In terms of health services, there is a clinic with qualified doctor and facilities for paediatrics, a sick-bay and a paediatric room. It was reported that HIV/AIDS is a problem in the Prison, with a prevalence rate of 68%; however there is an HIV care program which includes provision of anti-retroviral drugs to all persons living with HIV/AIDS, and the prevention of mother-to-child-transmission, as a result of which all the babies in the prison were HIV negative. The delegation also learnt that new mothers were given 3 months to rest after giving birth, exclusively breastfeed their babies, and that the infants remained in their mother's care until the age of 3 years old.
190. The delegation also learnt that the **Phalala Medical Referral Fund**, a healthcare fund provided by the Government to Swazi citizens, is also accessible to prisoners, and where necessary, they could access funds for medical care outside the country.
191. It was also noted that convicted prisoners were allowed visits during the weekend, while prisoners on remand were allowed visitors every day. The delegation however learnt that there are no facilities for the exercise of conjugal rights, and that the issue was being addressed, amongst others, by the Correctional Services Bill No. 20 of 2015, which was still pending in Parliament. The delegation also learnt that illegal migrants and refugees were also detained in the facility while their deportation was being processed.

3. Visit to the Vulamasango School

192. Lastly, the delegation visited the **Vulamasango School** in Malkerns, where juvenile offenders receive education. According to the information received from **Mr. Dan Mavuso (Superintendent)**, the principal of the School, there were 470 juveniles attending the school, including male and female juvenile offenders. The boys stay in boarding facilities at the school, while the girls resided at the **Mawelawela** correctional centre. One issue noted was that pregnant girls were not allowed in school.
193. The delegation learnt that the school is open to the whole community, and the juvenile offenders mix freely with the other children, including the children of the prison officials who study at the same school, and that there is no discrimination between them including in the use of school uniforms. The school provides academic, vocational and arts trainings.

EXIT BRIEFING WITH THE PRIME MINISTER

194. On the last day of the Mission, the delegation attended an exit briefing with the Prime Minister, which was also attended by the Minister of Justice and Constitutional Affairs, the Acting Chairperson of the Swaziland Commission on Human Rights and Public Administration/Integrity, the Director of Public Prosecutions, senior officials in the Prime Minister's Office and the Ministry of

Justice, as well as members of the media from the national broadcasting television station.

PRESS CONFERENCE

195. Lastly, the delegation held a press conference, which was attended by journalists from both the print and electronic media. A press statement was read, which contained a preliminary assessment of the mission and highlighted some areas of concern and recommendations.

VI. OBSERVATIONS AND ANALYSIS

196. This section of the Report provides the general observations and findings of the Promotion Mission based on the visits and information gathered from the meetings and discussions with the different stakeholders.
197. The mission lasted for five days during which the delegation visited the capital city, in addition to visiting correctional facilities in Manzini. During the mission, the delegation had the opportunity to meet and interact with a cross-section of relevant stakeholders working in the field of human rights.
198. The mission took place under excellent conditions, and enjoyed the full support of the Ministry of Justice and Constitutional Affairs, which ensured that all the scheduled meetings and visits were carried out to the satisfaction of the delegation. The delegation is therefore satisfied that it met a wide segment of relevant stakeholders, which gave it a general idea about the human rights situation in the country and which forms the basis of the following observations.

POSITIVE ASPECTS

199. The Commission notes and appreciates the following as positive factors in the promotion and protection of human rights in Swaziland:
 - i. The authorization granted to the Commission to undertake the Promotion Mission, indicating the Government's willingness to cooperate with the Commission in addressing human rights issues in the country;
 - ii. Notes the opportunities presented by the Bill of Rights and other progressive provisions of the Constitution (2005), for the promotion and protection of human rights in the country;
 - iii. Commends the ratification of the Maputo Protocol on 05 October 2012;
 - iv. Further commends the establishment and operationalization of the Swaziland Commission on Human Rights and Public Administration/Integrity (SCHRPA);

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- v. Welcomes the fact that the death penalty has not been carried out since 1982, in addition to the commutation of a number of death sentences to life in prison by the King;
- vi. Notes the efforts made by the Swazi Government to enhance the proper functioning of the Judiciary;
- vii. Applauds to efforts undertaken to increase the number of women in the Police force;
- viii. Commends the use of alternative sentencing for first and second time offenders;
- ix. Notes with appreciation the resettlement program for previous offenders;
- x. Commends the incorporation of human rights in the training of the Royal Swaziland Police, as well as efforts towards professionalizing the police force;
- xi. Notes with satisfaction the educational and other skills acquisition facilities provided to prisoners;
- xii. Further commends the adoption of the Children's Protection and Welfare Act (2012), which prohibits child marriage and urges the Government to ensure the full and effective implementation thereof;
- xiii. Acknowledges the strategies and measures put in place by the Government, in the fight against HIV/AIDs pandemic in the country;
- xiv. Notes the commitment to address the effects of climate change, including through declaring climate change a national emergency.

AREAS OF CONCERN

200. The delegation however noted and remains concerned about certain challenges which inhibit the full realization and enjoyment of human rights by the citizens, and in this regard wishes to highlight the following:

General

- i. The failure to domesticate regional and international human rights instruments duly ratified by Swaziland, including the African Charter and the Maputo Protocol;
- ii. The failure to ratify the following regional and international human rights instruments:
 - The Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights;
 - The African Charter on Democracy, Elections and Governance;
 - The African Union Convention on Preventing and Combating Corruption.

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- The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty;
 - The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;
 - The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
 - The International Convention for the Protection of all Persons from Enforced Disappearance;
 - The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- iii. The failure to submit periodic reports in fulfillment of its obligations under the African Charter and the Maputo Protocol;
- iv. The delay in initiating a comprehensive law reform process, in order to align all existing laws with the Constitution, and in with particular the Bill of Rights;
- v. The lack of full and effective implementation of some of the provisions of the Constitution, including as regards appointment to constitutional positions;
- vi. The delay in enacting relevant enabling legislation to operationalize the provisions of the Constitution with regards to the Swaziland Commission on Human Rights and Public Administration/Integrity (SCHRPA);
- vii. The delay in the appointment of the requisite staff to ensure the effective functioning of the SCHRPA;
- viii. Inadequate financial independence and funding for oversight institutions, including the SCHRPA and the EBC;
- ix. The delay in enacting bills and policies which have the potential to enhance the enjoyment of human rights, including the following:
- the Human Rights Bill;
 - the Sexual Offences and Domestic Violence Bill;
 - the Access to Information Bill;
 - the Employment Bill;
 - the National Pension Bill;
 - the Workmen's Compensation Insurance Fund Bill;
 - the Swaziland Broadcasting Bill;
 - the Swaziland Broadcasting Corporation Bill; and
 - the draft Land Policy;
- x. The existence of draft laws which have the potential to inhibit the enjoyment of human rights, such as the Public Service Bill and the Electronic Evidence Bill;
- xi. The lack of effective and adequate separation of powers, which hinders the full and effective performance of the oversight role of Parliament, the delivery of

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justice by the Judiciary, in addition to the full independence of both Parliament and the Judiciary;

Equality and non-discrimination

- xii. The failure to ensure gender parity in the Judiciary and Parliament, including the non-implementation of Section 86 of the Constitution;
- xiii. The absence of a clear policy to address the obstacles which hinder women's election to positions in Parliament;

The death penalty

- xiv. The continued existence of the death penalty in the statute books, despite the fact that no death sentence has been carried out since 1982;

Torture

- xv. The lack of concrete information on the process of the domestication of CAT, in addition to the delay in enacting legislation which criminalizes torture;
- xvi. The absence of an independent mechanism to investigate allegations of torture committed by police and correction officers;
- xvii. The failure to incorporate the Robben Island Guidelines and the Luanda Guidelines in the training manuals of the Police and Correction Officers;

Prisons

- xviii. The overcrowding in the Matsapha Correctional Centre;
- xix. The need to upgrade the detention facilities which were built during the colonial era;
- xx. The challenges faced by the Correctional Services, including shortage of professionals, lack of operational equipment, budgetary constraints and inadequate training;
- xxi. Reports of the lack of categorization between rehabilitated and violent prisoners in prison cells;
- xxii. Reports of 'gangsterism,' in the correctional centers;

Access to and administration of justice

- xxiii. The acute shortage of Judges, inadequate facilities for the Judiciary and alleged poor management, resulting in the backlog of cases and inhibition of access to justice;
- xxiv. The lack of funds for the training of Judges and other judicial officials;
- xxv. The provisions of the Bill on Chiefs protecting traditional Chiefs from being taken to Court, which would have the effect of preventing access to legal redress;

xxvi. The absence of a national policy on legal aid;

Freedom of expression and access to information

xxvii. The continued existence in the statute books of several laws which restrict the right to freedom of expression, such as the Suppression of Terrorism of Act, in addition to laws criminalizing defamation and sedition;

xxviii. The absence of legislation on access to information;

xxix. The lack of full enjoyment of the right to freedom of expression, in particular media freedom resulting in self-censorship by the media, and also creating the potential for the inhibition of academic freedom;

xxx. The Public Service Broadcasting Guidelines which limit access to the media and restrict the freedom of expression of Members of Parliament;

xxxi. The absence of a law that will facilitate the establishment of community radio stations in Swaziland;

Freedom of Association and Assembly

xxxii. The lack of full enjoyment of the right to freedom of association, in particular non-registration and participation of political parties;

xxxiii. The absence of legislation governing registration, regulation, funding and financial control of political parties;

xxxiv. The provisions of the draft Public Service bill which could curtail the rights of freedom of association and assembly of civil servants;

Economic, social and cultural rights

xxxv. The reports which indicate that 60% of the country lives in poverty, in addition to the fact that women are disproportionately affected by poverty;

xxxvi. Low budgetary allocation to health, resulting in the lack of provisions in medical facilities, with reports of some lacking basic medicine, and in some cases requiring citizens to purchase crucial vaccinations;

xxxvii. The absence of an adopted policy to ensure protection of the rights of domestic workers;

xxxviii. Reported cases of forced evictions, following the sale of land to private owners or parastatals;

xxxix. The poor allocation of funds to the education sector from the Government, which has resulted in situations where parents are required to pay top-up fees;

Women and Children

xl. The failure to adopt the Sexual Offences and Domestic Violence Bill;

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- xli. The lack of a legal framework to promote gender equality and enhance women's rights, including on issues such as access to land and gender equality in marriage;
- xlii. The criminalization of abortion, contrary to the provisions of the Maputo Protocol and the provisions in the law which permit abortion in certain circumstances;
- xliii. The failure to adequately address cultural practices which prevent women's access to land, or require a male family member for registration of land;
- xliv. Cases of child marriage, in violation of the provisions of the Children's Protection and Welfare Act of 2012 which prohibits child marriage;
- xlv. Reports of the disbandment of the National Children's Coordinating Council, established under the Office of the Deputy Prime Minister;
- xlvi. The lack of a clear policy for the protection of children with disabilities;
- xlvii. The policy which restricts pregnant girls from going to school, thereby denying them the right to an education;

Extractive Industries

- xlviii. The failure to adopt the follow up legislation on the Mines and Minerals Act (2013);
- xlix. The failure to provide detailed information, as requested, regarding the processed of consultation and compensation of communities affected by extractive industries;

HIV/AIDS

- 1. The need for a concerted policy to address involuntary sterilization of women living with HIV/AIDS;
- li. The unprecedented rise in infections rates among young girls and women, aged between 15 and 24 years old, despite measures put in place by the Government;
- lii. The lack of distribution of condoms in Correctional facilities in spite of reported cases of sodomy, which leaves incarcerated people vulnerable to HIV/AIDS and other sexually transmitted diseases;
- liii. The need for a review of Government HIV programs to include LGBTI persons, and specifically men having sex with men (MSM) where there are reportedly high prevalence rates;

Human Rights Defenders

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- liv. Reports of restrictions imposed on civil society organizations and other non-State actors involved in the promotion and protection of human rights in Swaziland.

VII. RECOMMENDATIONS

- 201. The above areas of concern are an indication that Swaziland still faces some challenges in promoting and protecting human rights in the country. It is on this premise that the following recommendations are made, taking into account some of the commitments made by various stakeholders during this mission.
- 202. In light of the above, the Commission makes the following recommendations to the Government of Swaziland:

General

- i. Domesticate all regional and international human rights instruments which have been duly ratified by Swaziland, including the African Charter and the Maputo Protocol;
- ii. Ratify all outstanding regional and international human rights instruments;
- iii. Submit periodic reports in fulfilment of its obligations under the African Charter and the Maputo Protocol;
- iv. Urgently expedite a comprehensive law reform process, in order to align all existing laws with the Constitution, and in with particular the Bill of Rights;
- v. Ensure full and effective implementation of some of the provisions of the Constitution, including as regards appointment to constitutional positions;
- vi. Enact all relevant enabling legislation to operationalize the provisions of the Constitution with regards to the Swaziland Commission on Human Rights and Public Administration/Integrity (SCHRPA);
- vii. Ensure the appointment of the requisite staff to ensure the effective functioning of the SCHRPA;
- viii. Ensure the financial independence and funding for oversight institutions, including the SCHRPA and the EBC;
- ix. Expedite the enactment of bills and policies which have the potential to enhance the enjoyment of human rights, including those referenced under the Areas of Concern;
- x. Review all draft laws which have the potential to inhibit the enjoyment of human rights, including the Public Service Bill and the Electronic Evidence Bill;

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- xi. Ensure effective and adequate separation of powers, in order to enable the full and effective performance of the oversight role of Parliament and the delivery of justice by the Judiciary, and their independence;

Equality and non-discrimination

- xii. Ensure gender parity in the Judiciary and Parliament, including by implementing Section 86 of the Constitution;
- xiii. Develop a clear policy to address the obstacles which hinder women's election to positions in Parliament;

The death penalty

- xiv. Repeal the provisions in the statute books which provide for the death penalty, in addition to formalizing the moratorium on the death penalty, as a step towards effective abolition of the death penalty;

Torture

- xv. Ensure the domestication of CAT, in addition to enacting legislation which criminalizes torture;
- xvi. Establish an independent mechanism to investigate allegations of torture committed by police and correction officers;
- xvii. Incorporate the Robben Island Guidelines and the Luanda Guidelines in the training manuals of the Police and Correction Officers;

Prisons

- xviii. Take measures to address overcrowding in the Matsapha prison, including through adopting alternative sentencing policies and imposing non-custodial sentences;
- xix. Upgrade the detention facilities which were built during the colonial era;
- xx. Ensure provision of adequate human and material resources to the Correctional Services, and increase the training programs provided to correctional officers;
- xxi. Ensure categorization of prisoners so as to separate rehabilitated prisoners from violent one;
- xxii. Develop effective programs to address 'gangsterism' in the correctional facilities;

Access to and administration of justice

- xxiii. Address the acute shortage of Judges, in addition to the inadequate facilities provided to the Judiciary;
- xxiv. Ensure provision of adequate funds for the training of Judges and other judicial officials;

REV 1

xxv. Amend the Bill on Chiefs, which seeks to protect Chiefs from being taken to Court, in order to avoid restriction on access to justice;

xxvi. Establish a comprehensive national policy on legal aid;

Freedom of expression and access to information

xxvii. Amend all laws which restrict the right to freedom of expression, including the Suppression of Terrorism of Act and the laws which criminalize defamation and sedition;

xxviii. Adopt legislation on access to information;

xxix. Ensure enjoyment of the right to freedom of expression, in particular with regards to media freedom and academic freedom;

xxx. Amend the provisions of the Public Service Broadcasting Guidelines, which have the effect of restricting the freedom of expression of Members of Parliament;

xxxi. Enact a law regulating community radio stations in Swaziland;

Freedom of Association and Assembly

xxxii. Consider holding a referendum concerning the participation of political parties, in order to address the issue definitively;

xxxiii. Consider adoption of legislation governing registration, regulation, funding and financial control of political parties;

xxxiv. Amend the provisions of the draft Public Service bill which curtail the rights of freedom of association and assembly of civil servants;

Economic, social and cultural rights

xxxv. Take immediate and effective measures to combat poverty, and specifically its effects on women;

xxxvi. Ensure that medical facilities have the requisite material resources, including basic medicine and vaccinations;

xxxvii. Develop a clear policy to ensure protection of the rights of domestic workers;

xxxviii. Investigate the reported cases of forced evictions, following the sale of land to private owners or parastatals, and establish a clear policy on addressing cases of forced evictions;

xxxix. Ensure adequate allocation of funds to schools in the National Budget, to facilitate the universal primary education program;

Women and Children

xl. Urgently adopt the Sexual Offences and Domestic Violence Bill;

REV 1

- xli. Develop concrete policies to address cultural practices which prevent women's access to land, and conduct the necessary sensitization among the general public;
- xlvi. Adopt legislation or policy to ensure that abortion is not criminalized, contrary to the provisions of the Maputo Protocol and the provisions in the national law which permit abortion in certain circumstances;
- xlvi. Establish a legal framework to promote gender equality and enhance women's rights, including on issues such as access to land and gender equality in marriage;
- xlvii. Investigate the reported cases of child marriage which are in violation of the Children's Protection and Welfare Act of 2012, with the view to bringing the perpetrators to justice;
- xlviii. Take all necessary measure to re-establish the National Children's Coordinating Council, established in the Office of the Deputy Prime Minister;
- xlix. Urgently develop a clear policy for the protection of children with disabilities;
- l. Revise the policy which prevents pregnant girls from receiving education;

Extractive Industries

- li. Ensure adoption of the follow up legislation to the Mines and Minerals Act (2013);

HIV/AIDS

- li. Urgently develop a concerted policy to address involuntary sterilization of women living with HIV/AIDS;
- li. Take all necessary measure to address the unprecedented rise in infections rates among young girls and women, aged between 15 and 24 years old;
- li. Consider distribution of condoms in Correctional facilities, to ensure the protection of incarcerated people vulnerable to HIV/AIDS and other sexually transmitted diseases;
- li. Develop HIV/AIDS programs on LGBTI persons, and specifically men having sex with men (MSM);

Human Rights Defenders

- li. Address the restrictions imposed on civil society organizations and other non-State actors, which have the effect of restricting the freedom of assembly and association and limit the operationalization of NGOs Reports of involved in the promotion and protection of human rights in Swaziland;
- li. Develop a legal framework for the protection of human rights defenders in conformity with the UN Declaration on Human Rights Defenders 1998 and the Commission's Resolutions on Human Rights Defenders including

REV 1

ACHPR/Resolution 69 (XXXV) 04, ACHPR/Resolution 119 (XXXXII) 07, and
ACHPR/Res.196 (L) 11.

LIST OF CSOs MET

1. Linda Nxumalo, the Swaziland Commission on Human Rights and Public Administration/Integrity (SCHRPA)
2. Wandile Dhidlu, SUFD
3. Zodwa Mkhouta, PUDEMO
4. Mary Pais da Silva, LHRS
5. Masuku Mario, PUDEMO
6. Sizakele Hlatshyo, SWAGAA
7. Hlohisile Nxumalo, Acts of Faith
8. Emmanuel Ndlargamath, CANGO
9. Comfai Mabuza, HURISWA
10. Tjengisile Shabangu, WUSSD
11. Slindiwe Mkosi, SWAGAA
12. Thulani Lushaba, WLSA
13. Dumsani Dlamini, WLSA
14. Tenele Mkhabela, SWAGAA
15. Lungile Mnisi, CANGO
16. Diso Aphane, LHRS
17. Lomatz Dlamini, LHRS/CA
18. Elena Gentili, COSPE
19. Zodwa Baartjies, FHI 360
20. Dumisani Mnisi, Save the Children

LIST OF TRADE UNIONS MET

1. Vincent Nkongwane, TUCOSWA
2. Phumelele Dlamini Zulu, TUCOSWA
3. Siphon Shongwe, FESBG.